

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6477

DATE COMPLAINT FILED: June 17, 2011/July  
5, 2011 (amendment)

DATE OF NOTIFICATION: June 23/July 8, 2011  
(amendment)

DATE ACTIVATED: September 28, 2011

EXPIRATION OF SOL: June 14, 2016

**COMPLAINANT:**

Dave Jacobson, Campaign Manager, Janice Hahn  
for Congress

**RESPONDENTS:**

Turn Right USA and Claude Todoroff,  
in his official capacity as Treasurer, and G. Rick  
Marshall, as designated agent  
Friends of Craig Huey for Congress  
and David Bauer, in his official capacity as  
treasurer  
Craig Huey

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441a  
2 U.S.C. § 441d  
2 U.S.C. § 441i(e)  
11 C.F.R. § 109.20  
11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Complainant alleges that Turn Right USA ("TRUSA"), an independent-expenditure-only  
committee, produced an "incendiary, racist and sexist ad" attacking Janice Hahn, a candidate for  
U.S. Congress from California in 2011, in coordination with Hahn's opponent, Craig Huey and  
Huey's principal campaign committee, Friends of Craig Huey for Congress ("the Huey  
Committee"), in violation of Sections 441a and 441i(e) of the Federal Election Campaign Act of

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1 1971, as amended ("the Act"). Complainant also alleges that TRUSA falsely stated in its ad that  
2 the ad was "not authorized by any candidate or candidate's committee," in violation of Section  
3 441d.

4 Respondents deny the coordination allegations. TRUSA reported the ad as an  
5 independent expenditure and argues that the ad is not a coordinated communication because it  
6 does not meet the content or conduct prong of the coordinated communication test under  
7 11 C.F.R. § 109.21. The Huey Committee asserts that it had no contact with TRUSA regarding  
8 the ad and was unaware of it until after it was contacted by the press for comments.

9 Upon review of the complaint, responses, and other available information, there appears  
10 to be no basis for concluding that TRUSA coordinated with the Huey Committee regarding this  
11 ad. Therefore, we recommend that the Commission find no reason to believe that: Turn Right  
12 USA, Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as designated  
13 agent, violated 2 U.S.C. § 441a; or Turn Right USA and Claude Todoroff, in his official capacity  
14 as treasurer, violated 2 U.S.C. § 441d; or Craig Huey and Friends of Craig Huey for Congress  
15 and David Bauer, in his official capacity as treasurer, violated 2 U.S.C. § 441a or  
16 2 U.S.C. § 441i(c); and close the file.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Facts**

19 TRUSA is a political committee that registered with the Commission as an independent-  
20 expenditure-only committee in June 2011. Claude Todoroff is TRUSA's treasurer. TRUSA's  
21 Statement of Organization includes a letter stating that, consistent with *SpeechNow.org v. FEC*,  
22 599 F.3d, 686, 689 (D.C. Cir. 2010) (*en banc*), it intends to make independent expenditures and

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1 raise funds in unlimited amounts, but will not use those funds to make direct or in-kind  
2 contributions to, or coordinated communications with, Federal candidates or committees.

3 In a complaint and amended complaint filed on June 17 and July 5, 2011, respectively,  
4 Complainant alleges that TRUSA coordinated with Craig Huey and the Huey Committee, in  
5 producing an attack ad directed at Huey's opponent for Congress, Representative Janice Hahn.  
6 Huey and Hahn were candidates in the 36th Congressional District of California running in a  
7 special runoff election held on July 12, 2011. Hahn won the election.

8 The ad was posted by TRUSA on its website and YouTube. The negative video ad  
9 flashes images of gangsters and criminal activity and contains words linking Hahn, who at that  
10 time was a Los Angeles Councilwoman and a Federal candidate, to gang members and gang-  
11 intervention programs. At the end of the video is the statement "Donate Now Help TRUSA  
12 Keep Janice Hahn Out of Congress," and a disclaimer "Paid for by Turn Right USA  
13 (<http://TURNRIGHTUSA.org>) Definitely not authorized by any candidate or candidate  
14 committee. So suck it, McCain-Feingold." See [http://www.turnrightusa.org/janice-hahn-for-](http://www.turnrightusa.org/janice-hahn-for-congress/)  
15 [congress/](http://www.turnrightusa.org/janice-hahn-for-congress/).

16 TRUSA reported the ad as an independent expenditure on its 2011 July Quarterly Report.  
17 The disclosure report shows a \$5,792.12 disbursement to CampaignLA on June 14, 2011, for the  
18 "Internet Rap Video - Give me your cash," and lists Hahn as the federal candidate supported or  
19 opposed by the expenditure.

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As support for its coordination allegation, Complainant cites: (1) TRUSA's and Huey's use of a common vendor; (2) a former Huey Committee volunteer's involvement with TRUSA; and (3) distribution by Huey campaign canvassers of a DVD containing footage similar to that found in the TRUSA ad, suggesting that the ad may be a republication of campaign materials.

As to the complaint's common vendor allegation, it states that TRUSA shares an address with its vendor, CampaignLA, which was also a vendor to the Huey Committee, as reported in the Huey Committee's pre-special election disclosure report. Complaint at 1; *Amorion* Complaint at 1. Complainant asserts that TRUSA is further linked to CampaignLA because domain name records for TRUSA's website, Turnrightusa.org, list [dong@campaignla.com](mailto:dong@campaignla.com) as its registered agent and campaignla.com as a related domain. *Id.* Complainant also alleges that TRUSA employs a former Huey Committee volunteer, G. Rick Marshall, TRUSA's designated agent, who had apparently volunteered for the Huey Committee during the primary election "but left over [the Huey campaign's] strategic direction." Complaint at 1 (citing a June 15, 2011, TRUSA press release). Finally, Complainant asserts that the DVD distributed by the Huey campaign canvassers "contain[ed] footage identical" to that found in the TRUSA video at issue in the complaint. The DVD, which was submitted along with the complaint, is a copy of a report by Fox News Channel 11 in Los Angeles regarding Huhn's involvement in a "gang intervention program." The video of the report is available on the Fox 11 news site at <http://www.myfoxla.com/dpp/news/investigative/investigation> Los Angeles Gang Intervention Money Going to Gang Members.

The Huey Committee denies the coordination allegations, asserting it had no contact with TRUSA regarding the ad and was unaware of the production of the ad until after it was contacted

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1 by the press for comments.<sup>2</sup> Huey Committee Response to the Complaint. The Huey Committee  
2 further asserts that it is unsure as to the connection the complaint attempts to make between the  
3 video distributed by the Huey campaign and the TRUSA YouTube video because the former is a  
4 copy of a Fox News Story that aired on April 30, 2008, while the latter is an independent  
5 expenditure of a "rap music parody of candidate Hahn's budget priorities." Huey Committee  
6 Response to the Amended Complaint.

7 In a response filed by G. Rick Marshall and Claude Todoroff, TRUSA also denies the  
8 coordination allegations. TRUSA acknowledges that it produced and paid for the internet video,  
9 but asserts that no violations occurred because the coordination standard was not met. TRUSA  
10 asserts that the ad does not satisfy the content prong because it is not an electioneering  
11 communication or a "public communication." TRUSA Response at 2-4. TRUSA also asserts  
12 that the ad does not satisfy the conduct prong, because, TRUSA contends, the Huey campaign  
13 had no involvement with the video. *Id.* at 5-6. Responding to the allegation that the Huey and  
14 TRUSA ad contained identical footage, TRUSA asserts that the material for its video came from  
15 a publicly available source, the Fox News Channel 11 Report on the gang intervention program,  
16 and that its video, which it describes as a parody of a rap song, was made and distributed before  
17 the Huey campaign materials on gang intervention specialists were distributed. *Id.* at 3-6.  
18 Responding to the common vendor allegations, TRUSA states that the vendor service provided  
19 by CampaignLA to the Huey campaign consisted of the supply of "100 lawn signs," and is not  
20 the type of vendor service enumerated under the common vendor rule. *Id.* at 6. Also, TRUSA

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<sup>2</sup> Several news accounts report that Huey made statements condemning the ad and denying that it was authorized or affiliated with his campaign. See, e.g., <http://redondobeach.patch.com/articles/hahn-files-fec-complaint-against-huey> and <http://latimesblogs.latimes.com/california-politics/2011/06/youtube-video-roils-special-congressional-election.html>.

1 notes CampaignLA provided the services to the Huey campaign during the primary election, "a  
2 period before anyone knew that Huey would be in a runoff with Hahn." *Id.* TRUSA further  
3 states that, although TRUSA and CampaignLA share a common mailing address, they have  
4 different mailboxes. *Id.*

5 **B. Analysis**

6 **1. Coordination**

7  
8 The central issue in this matter is whether the ad paid for by TRUSA was, in fact, an  
9 independent expenditure, as reported by TRUSA, or rather was coordinated with the Huey  
10 Committee. The Act provides that no multicandidate committee shall make contributions to any  
11 candidate and his or her authorized political committee with respect to any election for Federal  
12 office, which in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A). *See SpeechNow.org v.*  
13 *FEC*, 599 F.3d at 696; *see also* Advisory Opinions 2010-09 (Club for Growth); 2011-11  
14 (Commonsense Ten).

15 The Act provides that an expenditure made by any person "in cooperation, consultation,  
16 or concert with, or at the request or suggestion of" a candidate or his authorized committee or  
17 agent is a contribution to the candidate. *See* 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a).  
18 A communication is coordinated with a candidate, an authorized committee, a political party  
19 committee, or an agent thereof if it meets a three-pronged test: (1) it is paid for, in whole or in  
20 part, by a third party (a person other than the candidate, authorized committee or political party  
21 committee); (2) it satisfies at least one of the five "content" standards described in 11 C.F.R.  
22 § 109.21(c); and (3) satisfies at least one of the six "conduct" standards described in 11 C.F.R.  
23 § 109.21(d). 11 C.F.R. § 109.21(a). In contrast, an independent expenditure is an expenditure

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1 by a person for a communication expressly advocating the election or defeat of a clearly  
2 identified candidate that is not made in cooperation, consultation, or concert with, or at the  
3 request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a  
4 political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

5 In this matter, although the first prong of the coordinated communication test, the  
6 payment prong, is satisfied because TRUSA is a third-party payor, the second prong of the test,  
7 the content standard, is not satisfied. The content prong is satisfied if the communication at issue  
8 meets at least one of the following content standards: (1) a communication that is an  
9 electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that  
10 disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a  
11 candidate or the candidate's authorized committee; (3) a public communication that expressly  
12 advocates the election or defeat of a clearly identified candidate for Federal office; (4) a public  
13 communication, in relevant part, that refers to a clearly identified House or Senate candidate, and  
14 is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or  
15 fewer before the candidate's primary election; or (5) a public communication that is the  
16 functional equivalent of express advocacy. See 11 C.F.R. § 100.21(c). The term "electioneering  
17 communication" encompasses only broadcast, cable, and satellite communications and does not  
18 include communications over the Internet. See 11 C.F.R. § 100.29(c)(1). The term "public  
19 communication" encompasses broadcast, cable or satellite communication, newspaper,  
20 magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form of  
21 general public political advertising. 11 C.F.R. § 100.26. The term general public political  
22 advertising does not include communications over the Internet, other than communications  
23 placed for a fee on another person's website. *Id.*

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1 Here, the content prong of the coordinated communication test is not met because the ad  
2 was publicly available, posted on a website, and therefore does not appear to constitute an  
3 electioneering communication or public communication. According to TRUSA, the ad was  
4 posted on the Internet, on a public website, and TRUSA did not pay any fees for posting it on  
5 any other person's website. TRUSA's response at 2. TRUSA explains the video was uploaded  
6 on YouTube and was accessible to viewers with links to the video either through email, links in  
7 news stories about the video or through TRUSA's website www.hainshomeboyz.org. *Id.*  
8 Complainant did not allege or provide any evidence that TRUSA released its ad other than on the  
9 Internet or that TRUSA paid a fee for placing or showing the ad on other websites, nor do we  
10 have any information indicating such.

11 The available information does not indicate that the conduct prong was satisfied. 11  
12 C.F.R. § 109.21(d)(1)-(6). Under the Commission's regulations, six types of conduct between  
13 the payor and the committee, regardless of whether there is agreement or formal collaboration,  
14 satisfy the conduct prong of the coordination standard: (1) the communication "is created,  
15 produced, or distributed at the request or suggestion of a candidate or an authorized committee,"  
16 or if the communication is created, produced, or distributed at the suggestion of the payor and the  
17 candidate or authorized committee assents to the suggestion; (2) the candidate, his or her  
18 committee, or their agent, is materially involved in the content, intended audience, means or  
19 mode of communication, the specific media outlet used, the timing or frequency of the  
20 communication, or the size or prominence of a printed communication or duration of a broadcast,  
21 cable or satellite communication; (3) the communication is created, produced, or distributed after  
22 at least one substantial discussion about the communication between the person paying for the  
23 communication, or that person's employees or agents, and the candidate or his or her authorized

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1 committee, his or her opponent or opponent's authorized committee, a political party committee,  
2 or any of their agents;<sup>3</sup> (4) a common vendor who has a previous relationship (defined in terms  
3 of nine specific services) with the candidate, the candidate's authorized committee, the  
4 candidate's opponent or that opponent's authorized committee or a political party committee,  
5 during the previous 120 days, and uses or conveys information material to the creation,  
6 production, or distribution of the communication;<sup>4</sup> (5) a former employee or independent  
7 contractor uses or conveys information material to the creation, production, or distribution of the  
8 communication; and (6) the dissemination, distribution, or republication of campaign materials.<sup>5</sup>  
9 11 C.F.R. § 109.21(d)(1)-(6).

10 As a threshold matter, a third-party payor may be exempt from the coordination conduct  
11 standards if the allegedly coordinated communication was derived from a publicly available  
12 source. The material involvement, substantial discussion, use of a common vendor and  
13 involvement of a former employee/independent contractor standards of the conduct prong are not  
14 satisfied "if the information material to the creation, production, or distribution of the  
15 communication was obtained from a publicly available source." 11 C.F.R. § 109.21(d)(2)-(5).  
16 *See also Explanation and Justification for the Regulations on Coordinated Communications,*  
17 71 Fed. Reg. 33190, 33205 (June 8, 2006) (explaining that "[u]nder the new safe harbor, a

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<sup>3</sup> A "substantial discussion" includes informing the payor about the campaign's plans, projects, activities, or needs, and that information is material to the creation, production, or distribution of the communication. *See* 11 C.F.R. § 109.21(d)(3).

<sup>4</sup> The specific services are: development of media strategy, including the selection or purchasing of advertising slots; selection of audiences; polling; fundraising; developing the content of a public communication; producing a public communication; identifying voters or developing voter lists, mailing lists, or donor lists; selecting personnel, contractors, or subcontractors; or consulting or otherwise providing political or media advice. 11 C.F.R. § 109.21(d)(4)(ii).

<sup>5</sup> The last standard applies only if there was a request or suggestion, material involvement, or substantial discussion that took place after the original preparation of the campaign materials that are disseminated, distributed, or republished.

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1 communication created with information found . . . on a candidate's or political party's Web site,  
2 or learned from a public campaign speech . . . is not a coordinated communication"). To qualify  
3 for the safe harbor for the use of publicly available information, the person or organization  
4 paying for communication "bears the burden of showing that the information used in creating,  
5 producing or distributing the communication was obtained from a publicly available source." *Id.*

6 Here, it appears that TRUSA's production of the ad is within the scope of the "publicly  
7 available source" safe harbor. According to TRUSA, the gang intervention theme used in its  
8 video ad was obtained from a publicly available source, a report by Fox News Channel 11 in Los  
9 Angeles regarding Hahn's involvement in a "gang intervention program," available on the Fox  
10 11 news site, and the video is a parody of rap song produced by a band called Splack Pac in the  
11 1990s. TRUSA Response at 5-6. The TRUSA video contains only brief footage from the news  
12 report. Huey Committee canvassers distributed a DVD copy of the same news report to voters,  
13 but the DVD does not contain or reference the TRUSA video. Thus, it appears that the  
14 information material to the creation, production or distribution of the TRUSA video was  
15 obtained from publicly available sources.

16 Even if TRUSA did not qualify for the safe harbor, the available information does not  
17 indicate that the various other tests for the conduct prong were satisfied. Both TRUSA and the  
18 Huey Committee deny that the Huey Committee had any knowledge of, or involvement with,  
19 this ad, and there is no information to suggest otherwise. There is no available information  
20 indicating that the TRUSA ad was created at the request or suggestion of the Huey Committee,  
21 that the Huey Committee was materially involved in the content or distribution of the ad, or that  
22 the ad was created after a substantial discussion about the communication between  
23 representatives of TRUSA and the Huey Committee. Further, although TRUSA and the Huey

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1 Committee shared a common vendor, CampaignLA (which provided signs to the Huey  
2 Committee, and produced the Internet video for TRUSA), there is no information indicating that  
3 CampaignLA used or conveyed information material to the creation, production, or distribution  
4 of the communication. Similarly, although Marshall, the designated agent for TRUSA and the  
5 person who filed TRUSA's response to the complaint, was previously a volunteer (though not a  
6 former employee or independent contractor) with the Huey campaign during the primary election  
7 campaign; the available information does not indicate that Marshall used or conveyed  
8 information material to the creation, production, or distribution of the communication.<sup>6</sup>

9 Accordingly, we recommend that the Commission find no reason to believe that TRUSA,  
10 and Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as designated  
11 agent, or Craig Huey or Friends of Craig Huey for Congress and David Bauer, in his official  
12 capacity as treasurer, violated 2 U.S.C. § 441a.

13 Complainant also alleged that the Huey Committee violated 2 U.S.C. § 441i(e) by  
14 receiving a prohibited contribution via a coordinated communication. That section prohibits a  
15 Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending  
16 funds, in connection with an election for Federal office, including for any Federal Election  
17 Activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements  
18 of the Act. As discussed above, we conclude that TRUSA did not make a contribution to the  
19 Huey Committee. Accordingly, we recommend that the Commission find no reason to believe  
20 that Craig Huey or Friends of Craig Huey for Congress and David Bauer, in his official capacity  
21 as treasurer, violated 2 U.S.C. § 441i(e).

22  
<sup>6</sup> A press release on the TRUSA website, dated June 15, 2011, entitled "Hahn FEC Complaint" states that Marshall had volunteered for the Huey campaign during the primary, but had "left over its strategic direction." See <http://www.thurrightsm.org/press-releases/hahn-fec-complaint/>.

1                   2. Disclaimer

2           The Act and its accompanying regulations impose disclaimer requirements on certain  
3 types of communications: public communications made by a political committee containing  
4 express advocacy or soliciting contributions; all electioneering communications by any person;  
5 certain type and number of emails when sent by a political committee; and, all Internet websites  
6 of political committees available to the general public. 2 U.S.C. § 441d(a); 11 C.F.R.  
7 § 110.11(a). The disclaimer must state whether the communication was paid for and authorized  
8 by a candidate or candidate committee and identify who paid for and authorized the  
9 communication. *Id.*

10           The TRUSA ad contains the following disclaimer: "Paid for by Turn Right USA  
11 (<http://TURNRIGHTUSA.org>) Definitely not authorized by any candidate or candidate  
12 committee. So suck it, McCain-Feingold."

13           Complainant alleges that the ad contained a false disclaimer stating that the ad was not  
14 authorized by any candidate. As discussed above, we conclude that that the ad was not  
15 authorized by the Huey campaign. Accordingly, we recommend that the Commission find no  
16 reason to believe that Turn Right USA and Claudie Todoroff, in his official capacity as treasurer,  
17 violated 2 U.S.C. § 441d.

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**III. RECOMMENDATIONS**

1. Find no reason to believe that Turn Right USA and Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as designated agent, violated 2 U.S.C. § 441a;
2. Find no reason to believe that Turn Right USA and Claude Todoroff, in his official capacity as treasurer, violated 2 U.S.C. § 441d;
3. Find no reason to believe that Craig Huey violated 2 U.S.C. §§ 441a or 441i(e);
4. Find no reason to believe that Craig Huey for Congress and David Bauer, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a or 441i(e);
5. Approve the attached Factual and Legal Analyses;
6. Approve the appropriate letters; and,
7. Close the file.

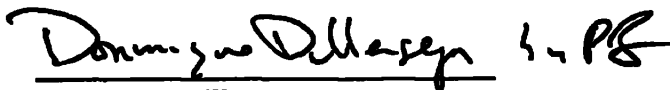
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Dominique Dillenseger  
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12-27-11  
Date